

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSEL MILTON WILLS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

NO. 2 1 3 7 8

BRIEF OF APPELLEE

Appeal from the United States District Court
for the Western District of Washington
Northern Division
Honorable William T. Beeks
District Judge

FILED

JUN 26 1967

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JUL 3 1967

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STATEMENT OF JURISDICTION¹

Appellant, Russel Milton Wills, was charged in the following one-count Indictment with refusing to be inducted into the Armed Forces of the United States on or about February 24, 1966 (R1):

"The Grand Jury charges:

That on or about February 24, 1966, at Seattle, Washington within the Northern Division of the Western District of Washington, RUSSEL MILTON WILLS did knowingly, wilfully and unlawfully fail, neglect and refuse to perform a duty required of him by the Universal Military Training and Service Act, and the rules, regulations and directions made pursuant thereto, in that, having been duly and regularly ordered by a local Selective Service Board to report and submit to induction into the Armed Forces of the United States of America, he failed, neglected and refused to be inducted.

All in violation of Title 50 U.S.C., App. Section 462, and 32 C.F.R. 1632.14."

Appellant entered a plea of "not guilty" on August 5, 1966 (R2-R4), waived trial by jury (R6) and was tried by the Court on September 12, 1966 (TR). The Court took the case under advisement and announced a decision of "guilty" on September 23, 1966, in a Memorandum Decision (R14). Appellant was sentenced to five years imprisonment on September 23, 1966,

¹/In this brief, (R) will refer to the number of the records herein given by the Clerk of the Court for the Western District of Washington. (TR) will refer to the Court Reporter's transcript of proceedings. (EX) will refer to exhibits.

1 with the recommendation that he not be eligible for parole
2 until such time as he had served two years of the sentence.
3 A notice of appeal was also filed on September 23, 1966.

4
5 Jurisdiction of the District Court was based on
6 Title 18, U.S.C., Section 3231. This Court has jurisdiction
7 of the appeal under Title 28, U.S.C., Section 1291.

8 COUNTERSTATEMENT OF THE CASE

9 The exhibits admitted into evidence at the trial
10 established that the appellant was ordered by Transfer Board
11 No. 3, Seattle, Washington, on February 15, 1966, to report
12 for induction on February 24, 1966. Appellant reported to
13 the Induction Station in Seattle on February 24, 1966, but
14 refused to be inducted into the Armed Forces. At that time
15 he signed a witnessed statement as follows:

16 "I refuse to be inducted into the Armed Forces
17 of the United States."

18 /s/ Russel Milton Wills

19 The following summary of events leading up to appellant's
20 refusal to be inducted is presented in chronological order
21 for the Court's convenience:

22 October 15, 1965: Registrant sent a letter to his draft
23 board, Local Board No. 47, Berkeley, California, in
24 which he advised said board that he had intentionally
25 destroyed his draft card and would henceforth refuse

1 to carry another. He further advised the Board that
2 he would refuse to cooperate with them in any manner
3 whatsoever (EX1, p.23)

4 October 21, 1965: Appellant was declared a delinquent and
5 was reclassified I-A (EX 1 - Cover Sheet).

6 October 23, 1965: Local Board 47 sent appellant SSS Form 110
7 which advised him of his I-A classification. He was
8 also advised by said form of his right to a personal
9 appearance before the local board, of his right to
10 appeal his classification to an appeal board, of his
11 right to a Presidential appeal, and of his right to
12 seek information or advice from any local board (EX 2)

13 December 27, 1965: The State Director of Selective Service,
14 State of California, advised Local Board No. 47,
15 Berkeley, California, that the registrant should be
16 ordered for induction as a delinquent (EX 1, p.28).

17 January 3, 1966: Local Board No. 47, Berkeley, California
18 sent a delinquency notice to the registrant (EX1, p.29).

19 January 5, 1966: Registrant acknowledged receipt of the
20 delinquency notice mailed on January 3, 1966 (EX 1, p.32)

21 January 31, 1966: Local Board No. 47, Berkeley, California,
22 mailed to the registrant an order to report for induction,
23 directing that he report for induction on February 16,
24 1966, at the Armed Forces Examining and Entrance
25 Station, Oakland, California. (EX 1, p.57)

1 February 3, 1966: Registrant mailed a letter to Local Board
2 No. 47, Berkeley, California, in which he acknowledged
3 receipt of his order to report for induction.
4 (EX 1, p.36-38)

5 February 7, 1966: Registrant appeared at Transfer Board No. 3,
6 Seattle, Washington, and requested to be transferred to
7 that Board for the purpose of reporting for induction
8 on a date to be set by Transfer Board No. 3, Seattle,
9 Washington. His request was approved by Transfer Board
10 No. 3 and he was in fact transferred from Local Board
11 No. 47, Berkeley, California, to Transfer Board No. 3,
12 Seattle, Washington, on February 10, 1966, for
13 induction. (EX 1, p.55)

14 February 15, 1966: Transfer Board No. 3, Seattle, Washington,
15 mailed to registrant an Order For Transferred Man To
16 Report For Induction, directing that he report for
17 induction on February 24, 1966, at the Armed Forces
18 Examining and Induction Station, Seattle, Washington.

19 February 24, 1966: Registrant reported to the Armed Forces
20 Examining and Entrance Station, Seattle, Washington, but
21 refused to be inducted into the Armed Forces of the
22 United States. At that time he signed a statement as
23 follows: "I refuse to be inducted into the Armed Forces
24 of the United States--signed Russel Milton Wills"
25 (EX 1, p.58 through 61).

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- 1 (b) Whether appellant already knew the reason for his
2 reclassification.
- 3 (c) Whether appellant failed to exhaust his administra-
4 tive remedies.

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7 SUMMARY OF ARGUMENT

8 1. The action taken by Local Board No. 47 in declaring
9 appellant to be delinquent was in accordance with existing
10 Selective Service regulations.

- 11 a. A Local Board can declare a registrant
12 delinquent for non-possession of his draft
13 card.
- 14 b. The reason stated for appellant's delinquency
15 necessarily includes the offense of non-
16 possession of a draft card.
- 17 c. Appellant's constitutional rights to self-
18 expression and to petition his Government were
19 not infringed by the Local Board's action of
20 declaring appellant delinquent for non-posses-
21 sion of his draft card.

22 2. The constitutionality of Public Law 89-152 is not
23 an issue in this case because the Indictment did not charge
24 appellant for a violation of said statute. Public Law
25 89-152 is nevertheless constitutional.

1 3. Appellant was not denied any procedural rights to
2 a personal appearance before the Local Board or to an appeal.

3 a. The lateness of the Local Board in sending
4 appellant a Delinquency Notice did not deprive
5 him of any procedural rights because he
6 already knew the reason for his reclassifica-
7 tion and because a Delinquency Notice by itself
8 does not entitle a registrant to a personal
9 appearance or to an appeal.

10 b. Appellant was advised of his procedural rights
11 to a personal appearance and to an appeal two
12 days after he had been declared delinquent
13 and reclassified I-A.
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THE LOCAL BOARD'S ACTION DECLARING
APPELLANT DELINQUENT WAS PROPER

On October 15, 1965, appellant wrote the following letter to Local Board No. 47 in Berkeley, California:

Gentlemen:

Respectfully,
/s/ Russel M. Wills
Russel Milton Wills

On October 21, 1965, Local Board No. 47 declared appellant to be a delinquent and made the following entry on his Selective Service Cover Sheet: "Destroyed reg. card." Appellant contends that a Draft Board cannot make a registrant delinquent for a "strongly-worded letter" because such action would

1 penalize peaceful expression of unpopular views and would
2 further abridge registrant's right to petition the Government.

3 Strongly-worded letter, standing by themselves, are not
4 a basis for a delinquency declaration. However, when the
5 letter has the registrant's signature affixed thereto and
6 states that the registrant has intentionally destroyed his
7 draft card, the letter is conclusive evidence that the
8 registrant does not have his draft card in his possession.

9 32 C.F.R. 1642 sets forth the circumstances under which
10 a registrant can be declared a delinquent. 32 C.F.R. Section
11 1642.4 states as follows:

12 (a) Whenever a registrant has failed to perform
13 any duty or duties required of him under the
14 Selective Service law other than the duty to
15 comply with an order to report for induction,
or the duty to comply with an order to report
for civilian work..., the Local Board may
declare him to be a delinquent.

16 One of the duties required under Selective Service law is for
17 a registrant to have in his possession at all times a
18 Selective Service Registration Certificate. This is spelled
19 out in 32 C.F.R. Section 1617.1 which provides as follows:

20 Every person required to present himself for
21 and submit to registration must, after he has
22 registered, have in his personal possession
23 at all times his Registration Certificate
(SSS Form No. 2) prepared by his Local Board
24 which has not been altered and on which no
notation duly and validly inscribed thereon has
been changed in any manner after its preparation
by the Local Board...

25 The reasonableness and validity of this regulation has been

1 affirmed in United States v. Kime, 188 F.2d 677 (7th Cir. 1951)
2 cert. den. 342 U.S. 823; United States v. Hertlein, 143 F.Supp.
3 746 (E.D. Wis. 1956); and O'Brien v. United States, _____ F.2d
4 _____ (1st Cir. April 10, 1967). The reasons for requiring a
5 registrant to have his Selective Service Registration
6 Certificate in his possession at all times are well stated
7 in United States v. Miller, 367 F.2d 72, 79 (2nd Cir. 1966)
8 cert. den. _____, and are summarized as follows:

- 9 1. Certificate serves as proof of registration
10 and contains complet information as to the
registrant's classification;
- 11 2. In time of war or national emergency, it pro-
12 vides an instant means in a transient society
13 of determining a registrant's fitness for
immediate induction, if exigencies require it;
- 14 3. The Certificate can assist a Local Board to
15 reconstruct files destroyed by fire or
disaster;
- 16 4. The Certificate carries a continuing reminder
17 to a registrant to notify his Board of facts
which might change his classification; and
- 18 5. The Certificate facilitates personal inquiries
to a Local Board.

19 Since Miller intentionally destroyed his draft card as
20 indicated in the October 15, 1965, letter, it follows that he
21 would not have the card in his possession and would thereby
22 fail to fulfill the duty set forth in 32 C.F.R. Section 1617.1.
23 Hence, the Local Board could properly declare him to be a
24 delinquent for failure to perform a duty required of him, in
25 accordance with 32 C.F.R. Section 1642.4. Once a registrant

1 has been declared delinquent, his Local Board may then
2 reclassify him to Class I-A in accordance with 32 C.F.R.
3 Section 1642.12 which reads in part as follows:

4 Any delinquent registrant between the ages
5 of 18 years and 6 months and 26 years...
6 may be classified in or reclassified into
7 Class I-A or Class I-AO, whichever is appli-
 cable, regardless of other circumstances...
 (Emphasis supplied).

8 Hence, Local Board No. 47 had the authority to declare
9 appellant delinquent and to reclassify him I-A and the Board
10 followed the provision of the Selective Service regulations
11 cited above when it took this action on October 21, 1965.

12 Appellant contends in Point V of his Opening Brief that
13 no statute or regulation authorizes a Local Draft Board to
14 declare a registrant delinquent for the reason that he
15 "destroyed his Registration Certificate." It should be noted
16 that a "Notice of Delinquency" by a Local Board does not make
17 a man delinquent. He is delinquent because of an act he
18 performs or fails to perform and not because of any determina-
19 tion by the Selective Service Board. Hence, Wills was
20 delinquent at the moment he failed to have his Registration
21 Certificate in his possession. The Notice of Delinquency
22 prepared by a Local Board is fundamentally a part of the
23 classification process and, in this case, the Notice of
24 Delinquency document was merely an official recordation in
25 appellant's file of a status into which he had already placed

1 himself the moment he failed to have his Registration
2 Certificate in his possession.

3 The Notice of Delinquency states that the reason for
4 the delinquency is that Wills "destroyed his Registration
5 Certificate" (EX 1, p.29). These words and this reason
6 necessarily include the fact that he did not have his Regis-
7 tration Certificate in his possession, because it would be
8 impossible for a person to have in his possession something
9 which he had recently destroyed. Therefore, the Board's
10 authority for declaring Wills delinquent was the non-posses-
11 sion of this draft card (32 C.F.R. 1617.1). When preparing
12 the Notice of Delinquency, the Board set forth therein the
13 reason for Wills not having the card in his possession
14 ("destroyed his Registration Certificate") rather than the
15 fact of non-possession. In brief, the words "destroyed his
16 Registration Certificate" include the fact that he no longer
17 possessed the Certificate.

18 Rule 31(c) of the Federal Rules of Criminal Procedure
19 provides:

20 The defendant may be found guilty of an offense
21 necessarily included in the offense charged...
22 (Emphasis supplied).

23 The case of O'Brien v. United States, _____ F.2d _____
24 (1st Cir. April 10, 1967) is directly in point. The defen-
25 dant was charged in a one count Indictment for wilfully and
knowingly mutilating, destroying and changing by burning his

1 registration certificate (SSS Form No. 2) in violation of
2 Title 50 U.S.C.A., Section 462(b)(3). The Indictment did not
3 contain a charge that the defendant failed to have his draft
4 card in his possession (a violation of 50 U.S.C.App.462(b)(6)).
5 The Circuit Court held that Public Law 89-152 (50 U.S.C.A.
6 462(b)(3) which makes it a crime to knowingly destroy or
7 mutilate a draft card, was unconstitutional, but nevertheless
8 affirmed O'Brien's conviction on grounds that he failed to
9 have his draft card in his possession. Even though O'Brien
10 was not charge with non-possession of his draft card in the
11 Indictment, the Court reasoned that the offense of non-posses-
12 sion was included in the offense of wilfull destruction. The
13 Court stated:

14 In burning his Certificate he not only contra-
15 vened subsection (b)(3), but also subsection
(b)(6).

16 Subsection (b)(6) of 50 U.S.C.A. 462 is the provision which
17 authorized prosecution for non-possession of a Certificate.

18 The Court in O'Brien, supra, also dealt with the same
19 constitutional allegations set forth in appellant's brief
20 herein and ruled that there is no constitutional objection to
21 conviction for non-possession of the Certificate. As stated
22 by the Court at page 5 of the Opinion:

23 Nor do we see any constitutional objection to
24 conviction for non-possession of a Certificate.
25 It is one thing to say that a requirement that
has no reasonable basis may infringe upon free
speech. Different considerations arise when

1 the statute has a proper purpose and the
2 defendant merely invokes free speech as a
reason for breaking it.

3 In summary, the law is clear that the offense of non-
4 possession of a draft card is included within the offense of
5 wilfull destruction of said card. The law is also clear that
6 a registrant's constitutional rights are not infringed when
7 he is convicted for non-possession of a draft card. Accord-
8 ingly, appellant Wills was properly declared a delinquent by
9 Local Board No. 47 on October 21, 1965, and his constitutional
10 rights to free speech and to petition his Government were not
11 infringed by said determination of delinquency.

12
13 II, III & IV

14 THE CONSTITUTIONALITY OF PUBLIC LAW 89-152
15 IS NOT AN ISSUE IN THIS CASE

16 Appellant argues in Points II, III and IV of his
17 Opening Brief that Public Law 89-152, making it a crime to
18 knowingly destroy or mutilate a draft card, is unconstitu-
19 tional because the statute abridges appellant's First
20 Amendment right to freedom of expression (Point II); because
21 it was intended and enacted for the purpose of suppressing
22 dissent (Point III); and because it does not serve any
23 rational legislative purpose and consequently deprives
24 appellant of personal liberty without due process of law
25 (Point IV).

1 The constitutionality of Public Law 89-152 relating to
2 the burning or destruction of draft cards is not an issue in
3 this case because the appellant has not been charged with
4 violating said statute. Appellant has only been charged by
5 Indictment with knowingly, wilfully and unlawfully refusing
6 to be inducted into the Armed Forces of the United States on
7 or about February 24, 1966, in violation of 50 U.S.C.App.
8 Section 462 and 32 C.F.R. 1632.14. The above cited regulation
9 provides as follows:

10 (a) When the Local Board mails to a registrant
11 an Order to Report for Induction (SSS Form
12 No. 252)...., it shall be the duty of the regis-
13 trant to report for induction at the time and
14 place fixed in such order...

15 Since appellant was not charged with nor found guilty of
16 violation of Public Law 89-152, the constitutionality of said
17 statute is not an issue before this Court. The draft card
18 burning statute enters this case only indirectly in connection
19 with the Notice of Delinquency, which issue was discussed
20 supra. in Points I and V.

21 Nevertheless, the draft card burning statute (Public
22 Law 89-152) has been tested before the Second and Eighth
23 Circuits and the statute has been held constitutional in both
24 United States v. Miller, 367 F.2d 72 (2nd Cir. 1966)
25 cert. den._____, and in United States v. Smith, 368 F.2d
529 (8th Cir. 1966). The First and Fifth Amendment arguments

1 set forth in appellant's opening brief herein were fully
2 discussed in the Miller case, supra, and to reiterate Judge
3 Tyler's opinion in this brief would be repetitious. It
4 should be noted, however, that the First Circuit in O'Brien v.
5 United States, ____ F.2d ____ (1st Cir. 1967) created a split
6 in the Circuits by recently holding the statute to be unconsti-
7 tutional. However, the First Circuit affirmed O'Brien's
8 conviction for violation of 50 U.S.C. Section 462(b) on
9 grounds that he did not have his draft card in his possession
10 after he had burned it.

11 12 VI & VII

13 APPELLANT WAS ADVISED OF RIGHTS TO PERSONAL
14 APPEARANCE AND TO APPEAL BY THE NOTICE OF
15 RECLASSIFICATION ISSUED ON OCTOBER 23, 1965;
HE FAILED TO EXERCISE THESE RIGHTS AND THUS
16 FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES

17 Appellant's Selective Service file reveals that he was
18 declared a delinquent and reclassified I-A on October 21,
19 1965. Two days later, Wills' Local Board sent him an
20 SSS Form No. 110 by which he was advised of his reclassifica-
21 tion to I-A and by which he was further advised of his right
22 to appeal the change of classification, of this right to a
23 personal appearance before the Board, and of his right to
24 obtain information regarding his reclassification from any
25 Selective Service Board (EX 2). However, the Local Board did
not send Wills a Delinquency Notice until January 3, 1966.

1 Wills contends, therefore, that he was prejudiced by the
2 delay and was denied procedural due process because he did
3 not know the reason for his I-A classification. (The reason
4 for the delay appears to be that the Local Board was
5 requesting the advice of the State Director of Selective
6 Service for the State of California as to whether or not it
7 should order Wills for immediate induction. An affirmative
8 reply from the State Director was received by the Local Board
9 on December 27, 1965, at which time the Delinquency Notice
10 was then forwarded to the registrant).

11 A. Lateness In Sending Delinquency Notice Didn't
12 Prejudice Appellant Because He Already Knew
13 Reason For Reclassification

14 32 C.F.R. 1642.4(a) provides that a Local Board may
15 declare a registrant to be delinquent whenever he has
16 failed to perform any duty required of him under the Selective
17 Service law. 32 C.F.R. 1642.4(b) provides that when a regis-
18 trant is declared delinquent, the Board should (1) note this
19 fact in registrant's Classification Questionnaire, (2) prepare
20 a Delinquency Notice, and (3) mail the original of the
21 Delinquency Notice to the registrant. Local Board No. 47
22 immediately accomplished the first and second requirement,
23 but did not fulfill the third requirement until January 3,
24 1966, about two months later.

25 The purpose of the requirement of mailing a copy of the
Delinquency Notice to the registrant is to make him aware of

1 his delinquency and the reason therefor. Receipt of a
2 Delinquency Notice by the registrant would be important when
3 he had unknowingly failed to perform a required duty or when
4 a third party had furnished information to the Board alleging
5 that the registrant had so failed to perform his duties.
6 That is not the situation in this case. Wills wrote his
7 draft board and told them that he had "intentionally destroyed
8 my draft card and will henceforth refuse to carry another."
9 He further advised his Board in the letter "I will refuse to
10 co-operate with your office in any manner whatsoever." He
11 then challenged his Board to act against him in the following
12 language:

13 If you wish to take any measures against me,
14 you can contact me at the following address...

15 Hence, it is impossible to visualize how Wills could have
16 been misled when he received a Notice of Reclassification
17 into Class I-A, which Notice was postmarked a week after he
18 mailed his letter to the draft board. The facts that he
19 had placed himself in a delinquent status by his own positive
20 and overt action, and had invited the Board to take action
21 against him, strongly suggest that he knew why he was
22 reclassified I-A.

23 32 C.F.R. 1642.3 casts strong doubt as to whether a
24 Local Board is even required to immediately send out
25 Delinquency Notices. It states:

1 Compliance by a Local Board or any other
2 agency of the Selective Service System
3 with any or all of the procedures prescribed
4 by the regulations in this part is not a
5 condition precedent to the prosecution of
any person under the provisions of Section 12
of Title 1 of the Universal Military Training
and Service Act, as amended (32 C.F.R. 1642.3).

6 Even if immediate Notice is required, said Notice would not
7 have given appellant any information of which he was not
8 already aware.

9 This Court has covered the topic of procedural irregu-
10 larities in Knox v. United States, 200 F.2d 398 (9th Cir.1952):

11 Procedural irregularities which do not result
12 in prejudice to the registrant are to be dis-
regarded.

13 And in Shaw v. United States, 264 F.2d 118 (9th Cir. 1959)
14 the same Court stated:

15 An appellate court is not required to search
16 the record with a microscope in an effort to
find minute but harmless flaws in the work of
administrative bodies or the lower courts.

17 B. Delinquency Notices Do Not Afford Registrants
18 Any Procedural Rights

19 There is no merit in appellant's conclusion, contained
20 on page 58 of his opening brief, that the "failure of the
21 draft board to notify appellant of the Declaration of
22 Delinquency in October stripped him of several procedural
23 protections afforded him by the Selective Service Regula-
24 tions..." A Declaration of Delinquency of itself does not
25 afford a registrant the right to a personal appearance, to a

1 reopening, or to an appeal. 32 C.F.R. 1642.14 provides that
2 a registrant can request a personal appearance before his
3 Board and take an appeal only when he has been classified in
4 or reclassified into Class I-A or I-AO under the provisions
5 of 32 C.F.R. 1642. Hence, even if the Local Board had mailed
6 the Delinquency Notice to Wills in October, 1965, said Notice
7 by itself would not entitle him to a personal appearance or
8 to an appeal.

9 C. Appellant Was Advised Of Right To Personal
10 Appearance And To Appeal On October 23, 1965,
11 But Did Not Exercise These Rights; Hence He
Failed To Exhaust His Administrative Remedies

12 After Wills had been declared delinquent on October 21,
13 1965, he was reclassified into Class I-A by the Local Board on
14 the same date. A Notice of Classification (SSS Form No. 110)
15 was mailed to Wills on October 23, 1965, advising him of his
16 new I-A classification. The Notice of Classification also
17 advised him of his rights to a personal appearance and to an
18 appeal in the following language:

19 If this classification is by a Local Board,
20 you may, within ten days after the mailing
21 of this Notice, file a written request for
22 a personal appearance before the Local
23 Board (unless this classification has been
24 determined upon such personal appearance).
25 Following such personal appearance, you may
file a written notice of appeal from the
Local Board's classification within the
applicable period mentioned in the next
paragraph after the date of the mailing of
the new Notice of Classification. If you
do not wish a personal appearance but do

1 want to appeal your case, you may do so by
2 making such an appeal in writing to your
Local Board, within the specified time...

3 If an appeal has been taken, and one
4 or more members of the Appeal Board dissented
5 from such classification, you may file a
6 written notice of appeal to the President
with your Local Board within ten days after
the mailing of this Notice.

7 Hence, Wills was fully advised of all the procedural rights
8 to which he was entitled. Furthermore, he was advised by the
9 SSS Form No. 110 to visit any Local Board for advice or
10 information concerning his reclassification. This was set
11 forth in the following language contained within SSS Form
12 No. 110: "For information and advice, go to any Local Board."

13 Wills failed to take any action at all. He did not
14 visit a Local Board; he did not request a personal appearance;
15 he did not seek an appeal. Even after receiving the
16 Delinquency Notice on January 3, 1966, Wills took no action,
17 even though he could have contacted his Local Board before an
18 Induction Order issued on January 31, 1966. The issue of the
19 Delinquency Notice was not raised until the actual trial of
20 this case.

21 The law is very clear that a registrant must exhaust all
22 of his administrative remedies with the Selective Service
23 System before he can attack his classification in a Court of
24 law. Evans v. United States, 252 F.2d 509, 511 (9th Cir. 1958);
25 Falbo v. United States, 320 U.S. 549, 88L.Ed. 305 (1944)

1 (and numerous other cases). Having been advised of his
2 reclassification into Class I-A on October 23, 1965, and
3 having been further advised of his right to a personal
4 appearance and to an appeal, Wills did nothing. Accordingly,
5 he failed to exhaust administrative remedies and cannot
6 complain of his classification at this time.

7
8 CONCLUSION


9 Wills was properly declared a delinquent on October 21,
10 1965, for non-possession of his draft card. He was properly
11 reclassified into Class I-A on October 21, 1965, because of
12 his delinquency and was immediately advised of said reclassi-
13 fication and of the appeal rights attached thereto. Wills
14 failed to seek a personal appearance or to appeal his
15 classification, and because he failed to exhaust these
16 administrative remedies, he is precluded from attacking his
17 classification now. Accordingly, the Order for Induction was
18 valid, and having refused to be inducted, Wills is guilty as
19 charged. Therefore, the United States respectfully contends
20 that the judgment of the District Court be affirmed.

21 Respectfully submitted,

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25 Assistant United States Attorney

1 I certify that, in connection with the preparation of
2 this brief, I have examined Rules 18 and 19 of the United
3 States Court of Appeals for the Ninth Circuit, and that, in
4 my opinion, the foregoing brief is in full compliance with
5 these rules.
6


7 
8 MICHAEL J. SWOFFORD
9 Assistant United States Attorney

10 I hereby certify that a copy of the aforesaid Brief of
11 Appellee was mailed this date to
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17 Counsel for Appellant

18 DATED at Seattle, Washington, this 22nd day of June,
19 1967.
20

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22 MICHAEL J. SWOFFORD
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24
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